



U.S. Citizenship  
and Immigration  
Services

WMI

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

OCT 22 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Cindy N. Gomez for*

Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Nicaragua who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed her application on July 1, 2002. It is noted that on this Form I-821, Application for Temporary Protected Status, the applicant checked the box indicating that this was an application for re-registration. If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. The record does not contain any evidence indicating that the applicant was previously granted TPS, or that the applicant had filed an earlier application for TPS. The applicant did not submit evidence to establish that she had applied earlier, and the records of Citizenship and Immigration Services (CIS) do not reflect an earlier application under the applicant's name and date of birth.

On October 28, 2002, the applicant was requested to submit additional evidence establishing her eligibility for late registration. This notice of intent to deny informed the applicant that she had established the requirements pertaining to her nationality, qualifying continuous residence, and continuous physical presence in the United States during the requisite periods. The applicant was afforded 30 days, until November 29, 2002, to respond to the notice of intent to deny her application. The record did not contain a timely response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Denial on December 11, 2002.

The applicant's response to the notice of intent to deny was received on December 18, 2002, subsequent to the director's issuance of the December 11, 2002, denial.

The director's denial decision advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. The applicant responded to the director's decision; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. **It is noted that the applicant's response to the Notice of Decision was received more than eight months after the issuance of the director's decision.** The applicant did not offer an explanation as to why the motion to re-open was filed after the allotted 30-day period. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that some of the documentation submitted by the applicant in response to the director's notice of intent to deny and the request for additional evidence appears to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by

independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In addition, the documentation submitted with the initial application consisted of: money transfer receipts dated between October 8, 1999 and June 18, 2002; two delivery receipts dated June 7, 1998 and November 15, 2001; a receipt dated September 24, 1998, bearing no name; and, a Certificate of Completion, Student Training Alcohol Related Topics Course, approved by the Florida Department of Highway Safety and Motor Vehicles, dated April 27, 2000. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claims to have lived in the United States since August 1997. The photocopy of her passport visa page indicates that she entered the United States at Miami, Florida, on August 26, 1997, as a B-1 visitor. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts.

Therefore, it must be concluded that the applicant has not established the requirements pertaining to her qualifying continuous residence, and continuous physical presence in the United States during the requisite periods, as the applicant has not demonstrated eligibility under 8 C.F.R. § 244.2(b) and (c).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded to the director for further action consistent with the above and entry of a decision.